

## **§ 3872.1**

effect by the clerk of the State court having jurisdiction in the case, and also by the clerk of the district court of the United States for the district in which the claim is situated, will be required.

### **Subpart 3872—Protests, Contests and Conflicts**

SOURCE: 35 FR 9760, June 13, 1970, unless otherwise noted.

#### **§ 3872.1 Protest against mineral applications.**

(a) At any time prior to the issuance of patent, protest may be filed against the patenting of the claim as applied for, upon any ground tending to show that the applicant has failed to comply with the law in any matter essential to a valid entry under the patent proceedings. Such protest cannot, however, be made the means of preserving a surface conflict lost by failure to adverse or lost by the judgment of the court in an adverse suit. One holding a present joint interest in a mineral location included in an application for patent who is excluded from the application, so that his interest would not be protected by the issue of patent thereon, may protest against the issuance of a patent as applied for, setting forth in such protest the nature and extent of his interest in such location, and such a protestant will be deemed a party in interest entitled to appeal. This results from the holding that a co-owner excluded from an application for patent does not have an "adverse" claim within the meaning of R.S. 2325 and 2326 (30 U.S.C. 29, 30). (See *Turner v. Sawyer*, 150 U.S. 578-586, 37 L. ed. 1189-1191.)

(b) A protest by any party, except a Federal agency, must include the processing fee for protests found in the fee schedule in § 3000.12 of this chapter.

[35 FR 9760, June 13, 1970, as amended at 70 FR 58880, Oct. 7, 2005]

#### **§ 3872.2 Procedure in contest cases.**

Parts 1840 and 1850 of this chapter, in cases before the United States, the Bureau of Land Management, and the Department of the Interior will, so far as applicable, govern in all cases and pro-

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ceedings arising in contests and hearings to determine the character of lands.

#### **§ 3872.3 Presumption as to land returned as mineral.**

Public land returned upon the survey records as mineral shall be withheld from entry as agricultural land until the presumption arising from such a return shall be overcome.

#### **§ 3872.4 Procedure to dispute record character of land.**

(a) When lands returned as mineral are sought to be entered as agricultural under laws which require the submission of final proof after due notice by publication and posting, the filing of the proper nonmineral statement in the absence of allegations that the land is mineral will be deemed sufficient as a preliminary requirement. A satisfactory showing as to character of land must be made when final proof is submitted.

(b) In case of application to enter, locate, or select such lands as agricultural, under laws in which the submission of final proof after due publication and posting is not required, notice thereof must first be given by publication for 60 days and posting in the local office during the same period, and affirmative proof as to the character of the land submitted. In the absence of allegations that the land is mineral, and upon compliance with this requirement, the entry location, or selection will be allowed, if otherwise regular.

(c) Where as against the claimed right to enter such lands as agricultural it is alleged that the same are mineral, or are applied for as mineral lands, the proceedings in this class of cases will be in the nature of a contest, and the practice will be governed by the rules in force in contest cases.

#### **§ 3872.5 Testimony at hearings to determine character of lands.**

(a) At hearings to determine the character of lands the claimants and witnesses will be thoroughly examined with regard to the character of the land; whether the same has been thoroughly prospected; whether or not there exists within the tract or tracts claimed any lode or vein of quartz or